

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	FCC
Developing a Unified Inter-carrier)	
Compensation Regime)	CC Docket No. 01-92
)	
)	

**REPLY COMMENTS OF THE
ALABAMA PUBLIC SERVICE COMMISSION**

The Alabama Public Service Commission (ALPSC) submits the following reply comments in response to the Federal Communication Commission’s (“FCC”) Public Notice seeking comment regarding the Missoula Inter-carrier Compensation (ICC) Reform Plan filed by the National Association of Regulatory Utility Commissioner’s Task Force on Inter-carrier Compensation (“NARUC Task Force”).

I. Discussion

The Alabama Public Service Commission shares many of the concerns enumerated in the comments filed by various parties addressing the many aspects of the Missoula Inter-carrier Compensation (ICC) Reform Plan. The Alabama Public Service Commission recognizes the need to address disparate access vs. interconnection rates, phantom traffic, unwarranted use of the network, and arbitrage. We know that the Missoula Plan is an attempt to solve these problems. However, we believe that the plan relies too heavily on

mechanisms which are holdovers from a monopoly environment rather than allowing market forces to drive prices. As the industry is struggling to transition to a competitive market, major players insist upon keeping entitlements by increasing the subscriber line charge, Restructure Mechanism funding and other funds rather than adjusting prices to market realities.

Preemption of State Authority

The states have been instrumental in enforcing local competition rules which have promoted competition. The states have also been the forum to resolve many disputes concerning both access charges and reciprocal compensation. Without the efforts of the states to establish competition and to require that companies be compensated for the use of their networks, local competition would not have developed. The states have stabilized development of competition since 1996. The role of the states is still necessary in order to assure that networks are open to competitors and that those utilizing the network pay for their use of network facilities. Since 1996, many state regulatory authorities have worked closely with all of the telecommunications industry in developing competition in the local markets while assuring that rates for the consumer remained stable.

As the Florida PSC (FPSC) points out, although the Plan is cast as having optional elements, the Plan explicitly allows complete FCC preemption of authority over intercarrier compensation rates, both interstate and intrastate. There is no basis in law for such an abrogation of

power. The Plan not only conflicts with preemption policy, it also treads on state law. Both the Federal law and the State laws provide the state commission the authority over intrastate rates and access charges. Sections 252(c), 252(d) (1) and 252(d) (2) of the Federal Telecommunications Act place state commissions in the role of prescribing rates for such traffic. The FCC is only authorized to set the methodology for the rate setting. Many states have mechanisms in place to move intrastate access charges to interstate levels, under certain circumstances, and thus eliminate some disparities. These state frameworks should not be thwarted,

with an increase from \$6.50 to \$10.00 to the customer's SLC cap. The Plan's premises underlying the claim of impossibility are weak. Removing state regulation from this process will destabilize the process by taking away an important forum which has been utilized in the past to bring companies to agreement.

Current Levels of Intercarrier Compensation

Many states have already implemented plans which have moved access charges and reciprocal compensation toward the target levels in the Missoula Plan. The Missoula Plan, however, does little to recognize the efforts of those states to accomplish Intercarrier compensation reform. In fact, these states maybe penalized by allowing subsidies flowing to those states which have not yet lowered access charges. The plan rewards those states which have state universal services funds but does not reward states

which rebalanced local service rates without establishing universal service funds. In 1986 Alabama started a process with BellSouth (Rate Stabilization and Equalization (RSE)) which among other items put a priority on reducing intrastate access rates. Additionally, Alabama initiated another process to increase local service rates and reduce intrastate access charges for all ILECs (BellSouth, CenturyTel, and rural ILECs). This process was largely accomplished by 2001. Thus Alabama's access rates are lower than most states. Therefore, Alabama's rebalancing of local service rates eliminated the need to establish a state universal service fund.

The levels of Inter-carrier Compensation need to be reviewed to determine whether the proposed rates are realistic goals. In addition, there needs to be an assessment of whether there are other methods available to recover the network costs which are more structured toward the future utilization of the network.

Increase in Subscriber Line Charge

The Missoula Plan leaves many questions unanswered, including whether the additional \$3.50 Subscriber Line Charge (SLC) will be enough to meet the revenue requirements. Each of these SLC increases implies further confusion for the consumer. Consumers see this increase as a rate increase. Without some flow through of reductions in Inter-carrier compensation, companies are simply raising rates to the end user. The SLC increases provide an advantage to VOIP and wireless providers since they do not have

SLCs. For that reason, many companies may choose not to raise the SLC in areas where they are experiencing competition, but raise SLCs for noncompetitive sectors such as rural customers and residential customers and lower rates in areas where they are experiencing competition. At the same time, there is a potential for deterioration of service quality in noncompetitive areas.

NASUCA, in its comments clearly shows that the SLC increase called for in the Missoula Plan would improperly subsidize high volume users. The plan creates a new subsidy from low volume end-users to high volume end-users by increasing fixed charges to recover traffic sensitive costs. Because the Plan's proposed termination rate is below the incremental cost of service as measured by current reciprocal compensation rates, the rate is a subsidized rate and should be rejected. The various changes proposed for the existing USF High Cost Fund have little if any relationship to intercarrier compensation reform and amount to nothing more or less than a grab-bag of goodies for particular carriers or classes of carriers.

Transit Traffic

The plan calls for a transit rate which may be too high and provides for deregulation of an essential function for which there is no other provider. In addition, the plan calls for transit service to be included in commercial agreements, which is an attempt to avoid the obligations for negotiation and arbitration under the Telecom Act. The plan establishes transit rates with

no cost justification. Those companies providing the transit service are doing so because they are the dominant carriers in an area. These companies include regional Bell Operating Companies. These companies remain dominant in spite of the development of local competition. Nothing suggests that this dominance will weaken any time soon.

Because they have the majority of end users, these companies control the access other providers have to those end users. Thus, without regulatory oversight, these companies can dictate the price of transit service.

The companies providing transit service should be required to provide cost justification for transit service. Rates for this service should continue to be cost based until there is a determination that alternative providers exist for transit service.

Phantom Traffic

The Alabama Commission supports proposals which would implement requirements for all originating carriers to provide call signaling and call detail in order to compensate other carriers for transporting those calls. Without these requirements, phantom traffic undermines the ability of carriers to invest in expansion of their networks.

The Missoula Plan did not provide a complete scheme for dealing with phantom traffic but left the details to interconnection arrangements. The FCC should provide a detailed design for dealing with phantom traffic by specifying

that all originating carriers will provide signaling and call detail and provide rules for charges for transit services. Phantom traffic is one of the major issues in Intercarrier Compensation reform and should have been addressed in more detail in the Missoula Plan.

Creation of a New Fund

If the FCC determines that the Missoula Plan is the solution to the problem of phantom traffic and arbitrage, the Alabama Public Service Commission urges the FCC to continue to include the state commissions in the process to ensure that all companies have a local forum in which to resolve problems associated with Intercarrier Compensation. In addition, we think that the FCC should consider mitigating the impact on the consumers by applying the impact to customers of all companies including wireless and VOIP customers. Further, the commission should establish a time frame for the phase out of any restructure mechanism.

The Missoula Plan lowers access charges at both the interstate and intrastate levels. One of the major reasons for establishing the Missoula Plan is to eliminate phantom traffic, yet the plan fails to deal directly with these problems. For example, the plan provides no details about how (Voice Over Internet Protocol) VOIP providers will be identified initially, how penalties will be assessed on VOIP providers, or how such providers will be compelled to enter into interconnection agreements.

Discrimination Against CLECs

Because the plan discriminates against CLECs in many areas, it is anti-competitive.

The Telecom Act of 1996 allowed CLECs to interconnect with ILECs at any technically feasible point. The plan attempts to disrupt this scheme by requiring CLECs to pay transport to an interconnection edge. This Edge Interconnection disrupts the current interconnection process and places additional financial burdens on CLECs.

The Restructure Mechanism and the Early Adopter Fund are inappropriate and discriminate against CLECs as well as companies in those states which have already lowered access charges. In addition, the fund uses historical Minutes of use which allows recovery of costs for lines which companies no longer serve. The plan may put CLECs in a competitive disadvantage by placing them in Track 1. CLECs operating in rural areas would pay Track 2 and Track 3 ILECs a higher rate for access traffic than they would be paid by the ILECs for such traffic and would have responsibility for paying higher rates for both access and local transport than the ILECs.

Several of the state public utility commissions (PUCs) note the broad opposition to the Plan and even point out the vast majority of phone companies oppose it. The PUCs do not believe the Plan accomplishes the goals of access charge reform. It does not unify rates across companies, between technologies, or with respect to originating and terminating minutes. As a result it does not eliminate the opportunity for arbitrage.

II. Conclusion

The Missoula Plan has not yet been fully developed to address all of the major problems in Inter-carrier Compensation. As currently formulated, the plan will not succeed. The plan needs further work.

Alabama Public Service Commission
Respectfully submitted,

/s/ Mary E. Newmeyer

Mary Newmeyer

Advisory Staff

P.O. Box 304260

Montgomery, Alabama 36130